

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARON BARNUM)	
Claimant)	
VS.)	
)	
M & M INVESTORS)	Docket No. 202,708
Respondent)	
AND)	
)	
GRANITE STATE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Bruce E. Moore on October 27, 1997. The Appeals Board heard oral argument March 17, 1998.

APPEARANCES

Claimant appeared by her attorney, Jan L. Fisher of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, James M. McVay of Great Bend, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found claimant did not establish she suffered an accidental injury arising out of and in the course of her employment and further found that claimant did not give timely notice as required by K.S.A. 44-520. Claimant appeals from those findings. If the Appeals Board agrees with claimant and reverses the ALJ, claimant asks that the Board also determine the nature and extent of claimant's disability and claimant's right to outstanding medical, unauthorized medical, and future medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments by the parties, the Appeals Board finds and concludes the Award by the ALJ should be affirmed.

The Board finds claimant has not established that she suffered accidental injury arising out of and in the course of her employment. The Board finds more credible the version of events testified to by Matthew Hair. Claimant hurt her back lifting a recliner she and her husband had purchased as a Christmas gift, not from activity at work. Claimant's application for benefits must, therefore, be denied. K.S.A. 44-501.

The Board notes, parenthetically, the ALJ relied in part on the testimony of Barbara Goodwin giving a date of accident and description of accident arguably inconsistent with claimant's testimony. Claimant has argued it was improper to consider this testimony because Ms. Goodwin relied on the Employer's Report of Accident, a document which the legislature has indicated may not be considered as evidence. K.S.A. 44-557. Respondent points out the testimony of Ms. Goodwin was given in response to questions by claimant's counsel and no objection was made. Respondent argues the evidence may, therefore, be considered. The Board has concluded it would reach the same decision in this case regardless of whether Ms. Goodwin's testimony is or is not considered.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Bruce E. Moore, dated October 27, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
James M. McVay, Great Bend, KS
Bruce E. Moore, Administrative Law Judge

SHARON BARNUM

3

DOCKET NO. 202,708

Philip S. Harness, Director